

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

ROBERT FRERCK,

Plaintiff,

v.

JOHN WILEY & SONS, INC.,

Defendant.

CASE NO. 11-cv-02727

Hon. Robert M. Dow Jr.

Magistrate Judge Geraldine Soat Brown

**DECLARATION OF LISA SUAREZ
IN CONNECTION WITH DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, **Lisa Suarez**, pursuant to 28 U.S.C. § 1746, state as follows:

1. I am employed by Defendant John Wiley & Sons, Inc. ("Wiley") as a Senior Manager of Inventory in the Finance and Operations department of the Higher Education publishing division. I respectfully submit this declaration, based upon my personal knowledge and review of documents provided to me, in support of Wiley's Opposition to Plaintiff Robert Frerck's Motion for Partial Summary Judgment.

2. I have reviewed the tables in Paragraphs 13 and 14 of Plaintiff Robert Frerck's Separate Statement of Facts in Support of the Motion for Partial Summary Judgment, dated November 20, 2013 (the "Plaintiff's Statement of Facts"), as well as the exhibits accompanying the Declaration of Alex Rice Kerr, dated November 20, 2013, in support of Plaintiff's Motion for Partial Summary Judgment (the "Kerr Declaration").

3. The table in Paragraph 13 of the Plaintiff's Statement of Facts purports to compare the "Licensed Print Quantity" with the "Actual Print Quantity" for certain Wiley publications. The "Actual Print Quantity" figures in the table appear to be calculated based on the "Total Gross Units"

in Exhibit 2 to the Kerr Declaration for each ISBN associated with a claim for “Infringement Based on Print Run” set forth in Exhibit 1. According to the Kerr Declaration, Exhibit 2 was created based on a report produced by Wiley in this litigation bearing the Bates Number WFRERCK 0001223-0001252. This report, which was created on or around August 18, 2011, does not contain the most complete or current information for the titles at issue in this litigation. Furthermore, “Total Gross Units” is not the correct measure to ascertain the actual number of books printed.

4. I have also reviewed the more complete print run figures for the titles at issue in this motion in the spreadsheet bearing the Bates Number WFRERCK 004556. This spreadsheet was created on or around March 8, 2013, and was produced to Frerck in this litigation. This spreadsheet contains a column with the heading “RCPT/PMT Units (life to date),” which more accurately measures the number of books printed.

5. Based on my review, I confirm that Wiley exceeded the specified print run amounts set out for each of the line items in the table in Paragraph 13 of the Plaintiff’s Statement of Facts. However, the specific figures in the “Actual Print Quantity” column in the table are not accurate.

6. The table in Paragraph 14 of the Plaintiff’s Statement of Facts purports to represent the number of copies distributed outside the licensed area (i.e., “North America”). The figures in the table appear to be calculated based on Exhibits 3 through 8 of the Kerr Declaration. According to the Kerr Declaration, Exhibits 3 through 8 were prepared based on a document produced by Wiley in this litigation bearing the Bates Number WFRERCK 0002730. This report, which was created on or around October 11, 2011, does not contain the most complete information for the titles at issue in this litigation. Furthermore, the calculation improperly includes distributions to Barbados, Jamaica, Costa Rica, Trinidad and Tobago, and Antigua, all of which are considered to be part of North America.

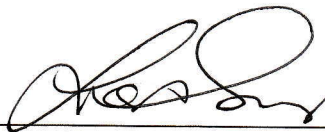
7. I have also reviewed the more complete geographic distribution figures for the titles at issue in this motion in the spreadsheet bearing the Bates Number WFRERCK 004555. This spreadsheet was created on or around March 8, 2013 and was produced to Frerck in this litigation.

8. Based on my review, Wiley has distributed less than 10% of the total specified number of copies outside of North America for the titles *Environmental Science: Earth As a Living Planet*, 3rd Edition, *Environmental Science*, 7th Edition, and *Dicho y Hecho: Beginning Spanish*, 6th Edition, outside of North America.

9. Wiley has not printed or sold any copies of the publications *Dicho y Hecho: Beginning Spanish*, 5th Edition, and *Environmental Science: Earth as a Living Planet*, 3rd edition, since at least April 26, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 20, 2013
Hoboken, New Jersey

By: 
Lisa Suarez